

LAKE COUNTY PLANNING AND ZONING COMMISSION
December 19, 2018
Lake County Courthouse, Rm. 317
Meeting Minutes

MEMBERS PRESENT: Paula Holle, Diana Luke, Dick Goldsmith, Bill Barron, Gale Decker, Dave Stipe

STAFF PRESENT: Jacob Feistner, Rob Edington, Lita Fonda; Wally Congdon

Dave Stipe, Chair, called the meeting to order at 10:07 am. The variance became the first item.

MELITA MT LLC VARIANCE—Melita Island/ Labella Lane (10:07 am)

Rob Edington introduced Hal Tiffany Jr., who represented Melita MT LLC. He presented the staff report. (See attachments to minutes in the Dec. 2018 meeting file for staff report and handout.) He noted that the Planning Dept. interpreted vacation rentals as a commercial use of a residential property. In the other zoning districts, vacation rentals were typically allowed, requiring that the property was rented as a whole and requiring a state license.

Diana asked if there was a timeframe as far as amending the Melita Island zoning to accommodate vacation rentals, if that was the intent of that zoning district. Rob replied that a timeframe was not set out. Jacob explained the department had received two requests for these [vacation rental] variances. They'd also had several parties against it. Since this was Type 1 zoning, staff would want those in the zoning district to take the initiative, find the support for it and propose it. The appropriate way to deal with it would be through a zoning amendment, not through continued variances. If those in the zoning district found support for this and brought it forward, the Planning Dept. would facilitate it. This was a small zoning district, containing part of Labella Lane and part of Melita Island Road.

Dick saw a host of issues. Multiple vacation rentals were probably operating right now without a variance or proper zoning. Did they continue under the radar? The issue needed to be addressed. People were buying homes specifically as a business investment for a vacation rental without the intention of living in them. Other people wanted to rent part-time, to rent rooms, or to rent the whole home. A comprehensive plan was needed to address the issue. He suggested a moratorium on more variances until the entire issue of vacation rentals was addressed.

Diana spoke from an Environmental Health standpoint. Last winter, they compiled a list of 260 vacation rentals that were being advertised. It was an ongoing list. They were reaching out to each of those and slowly bringing them through licensing. [The owner] was notified if zoning didn't allow it. Jacob said they had issued violation notices where zoning didn't allow it, such as in the Swan Sites [zoning area]. Diana outlined that they'd contacted property management companies and told them licensure was required. They could only work with those they were aware of. They mentioned it to those inquiring, including the realtors. It was public education.

Jacob said Planning addressed those [vacation rentals] they became aware of, and made the owner aware of what the options were. In response to Dick's questions, he explained that if the zoning didn't allow vacation rentals, they could amend the zoning or ask for a variance.

[Planning] had told people that they couldn't do this. Staff weren't out there monitoring. If neighbors told staff that the use continued, Planning would pursue that. As far as he knew, those who were told that they couldn't do this had stopped.

Dick understood that these things were complicated, staff weren't available and other issues were much more pressing for the County to handle. He thought there should be a comprehensive overhaul of the regulations so they didn't end up in the situation where hundreds of families violated the law while the guy who asked for a permit couldn't get it. It seemed like it was easier to ask for forgiveness than permission. Jacob noted one challenge was they had 16 different zoning districts [in the County] and the Planning Dept. took care of 13 of them. Most had different language and a different take on the situation, based on the people living in the area who initiated the zoning. To get continuity was difficult. Dick said he'd followed this issue in many cities in the country. At some point, a policy would come that addressed it.

Gale reiterated that zoning amendments and changes needed to be citizen initiated. He didn't think the County had the authority to require an area to look at their zoning if they didn't have the desire to do it. Jacob said he didn't want to force vacation rentals on a zoning district if the support wasn't there from the people living in the district. Planning would happily facilitate the process if it was brought forth and supported by the people who lived there. Dick asked how you got a feeling that they didn't support it without a referendum. Jacob replied if someone proposed it, there were opportunities for people to comment for or against, which was taken into consideration when the Commissioners made their decision.

Gale compared it to a Road Improvement District (RID). They weren't getting anything from these zoning districts saying they wanted to take a look at these rules. He agreed that it needed to be addressed. A lot of requests [for vacation rentals] were coming in. The Millennials were taking a different approach to vacation homes, where they bought them for investments and rentals for most of the year. Dick pointed to the changes in finding vacation places with the Internet. The vacation rentals were already here. The important thing was to address the impacts of the vacation rentals: number of occupants, parking, septic, noise, hours of operation, licensing, paying state bed tax and so forth. Gale thought this was addressed a little in the Growth Policy with the accessory dwelling units, where people were allowed to put another dwelling on their property as a guest house, which indirectly addressed what they were discussing. That now opened up the primary residence for rental.

Paula asked how often the Tiffanys stayed in their house. Hal Tiffany gave the example that he'd been there since September. Paula noticed that the deed indicated this property was subject to the zoning regulations. Hal said he didn't think he needed legal representation when he went to close. It was sold to him with the understanding it wasn't in this tiny zoning district and that he could use it the way that Mac used his. His family moved up here at the end of the Gold Rush, in 1880. This property was built upon in 2005.

Public comment:

Mary Jensen lived on Labella Lane. She was also on the County Board of Adjustments. She understood that the people notified of a change in zoning or a variance were the immediate neighbors next to the property at issue. She felt it was imperative that all of the zoning owners

were notified of this type of a decision. It affected all of them. She gave an example of road use, where their road was maintained by the property owners rather than the County. They needed a list of who was in their zoning group so they could have a meeting as suggested and everyone could be aware of what was going on. For this reason, she suggested they deny the request.

Mike Jimenez spoke on behalf of himself and his wife, Sandy Ostertag, full time residents on Labella Lane. He agreed with much of what Dick brought up. He appreciated the sentiment that people ask for input from the locals. They specifically bought property with the idea that there was a zoning restriction and it was single-family. When you had an ongoing unclear policy [of the zoning, use or density], it made it very difficult. The idea of zoning was to say 'here's what the intent of the use of that property would be'. That seemed to be at jeopardy here where it could be changed indiscriminately. That didn't seem to honor the original zoning or the requirements that drew his family to buy property there.

Sandy Ostertag thought the zoning districts were as they were because the majority of people wanted them to be that way. In terms of County regulations, she referred to Gale's example. She could see that happening in places that weren't zoned. The zoning districts were a bit different. In this zoning district, you were supposed to post in 4 visible places that something would happen. She didn't see that, in spite of walking the road a lot. She didn't understand the communication and transparency of what was going on. She found out about this 48 hours ago. That kind of process was problematic in terms of zoning districts.

Hal Tiffany said he trusted the County did proper notification in accordance with state statutes. He spoke with neighbors Kayle Hobbs to the east and Ken Hayes to the west. Both knew the property usage wouldn't be much different than anyone else's. His wife had nice furnishings in there. The intent was not to have a fraternity visit. Money-making was also not the intent. He did form an LLC, as he was an insurance guy by trade. He felt it was the best way to own a property and then deed it to his family trust. His daughter, who lived out of town, would be one of the users of the property, and his son's family. To make this financially feasible, he had to be able to go through with the plan that was presented and okayed by the real estate person, who already had a VRBO (Vacation Rental By Owner) property. He met the requirements of the case law in MT. He had a hardship that had been created by this. He had some good working years left and didn't want to sell his insurance agency to move up here full time, which would also affect the jobs of his 9 employees. As far as land use, it was better than him being here for 6 weeks of the year. If it was unoccupied, the chance of vandalism went up, and so forth. The people who had expressed interest were like him and his family. He thought he met the statutory requirements of the hardship and the use wouldn't harm the other people in the area.

Jacob commented this was noticed as required by zoning. The posting in four visible places that was referenced applied to an existing non-conforming use that you wanted to expand. This wasn't that, but rather a variance to allow a new use.

Wally talked about problems he saw with the zoning ordinance. It was Chapter 41, citizen initiated. He didn't think it was thought out well in terms of what it really said. He agreed with Dick that they needed to look at a lot of these things. He listed constitutional concerns with a sole residence being mentioned and with constraints on mobility. For the number of people,

occupancy, use, septic rules, parking and so forth, usually a variance wasn't the way you addressed [those] but this zoning district didn't have a conditional use permit. At this point in time, this would be a variance. Economic hardship or economic impossibility could be a hardship by Montana's court cases and so forth. People were also doing this because they wanted the tax deduction of a rental expenditure for depreciation.

Hal said Wally might amend what he said a bit. It was a passive investment. The most he could do was take losses if he sold someday. It was mainly for liability reasons, not for taxes. Wally thought others were doing it for taxes.

Wally said a bigger look at the picture was the better route to treat these at this time. If somebody didn't get a variance at some point, they might sue over the constitutionality. The Commissioners had the power to change Chapter 41 or Chapter 47 zoning. They would rather not do that. It was better if people did this on their own and figured out what fit. [The Commissioners] were also trying to encourage the zoning districts to bring those to the County and say they'd like to adjust or change this. Nobody showed up to do it at this point in time. They would show up if the ordinance was struck down. No one wanted the consequences of that. You could be a plan taker or a plan maker. By changing it yourself or doing the variance route, you made the plan for what it was. It was an interesting dilemma that the change was so much over 10 years that VRBO's were what people were looking for now. He agreed with Gale's comments about Millennials. The ironic twist was this was more like the old rule, where the family who had it now cashed out the rest of the family to have it, and at some point in time it wasn't affordable to do that so the family places went by the wayside. How much did they want to see the culture of the lake changed? Those were some observations. The legal thing concerned him, and the possible loss of the ability to regulate height, width, setback, parking, use and so forth if the ordinance got whacked.

Dave said this particular zoning district addressed few of those things. Jacob agreed but it did give standards for why a variance could be granted. Financial hardship was not one of them. It talked about strict enforcement resulting in an undue hardship, no reasonable alternatives being available and not adversely affecting public health, safety and welfare for variances. Dave checked that hardship couldn't be that the realtor didn't give the correct information. Hal agreed. He didn't want to cause harm to the realtor that handled the transaction. He accepted those responsibilities. He also knew he fell within the case law that backed up his argument. A guest house was permissible.

Gale pointed out the zoning said the sole use allowed rather than the sole residence. Jacob pointed to the definition of primary residence, which mentioned sole and/or permanent living quarters for the residents. Wally said that was where he had a problem with it. Dave noted long term rentals had always been allowed. Wally said the ordinance said you couldn't. Dave said you'd have to be enforcing that part for that to be overturned. Wally thought someone could question the ordinance and get it stricken. Sandy checked that the intent of having a residential 1 zoning was that businesses weren't conducted to the public on a day-to-day basis within a residential 1 district. Jacob said this zoning district appeared to be aiming for that, for residential uses only. It was written in 1986 before vacation rentals were on the table. Dave continued that it was before people worked out of their homes with Internet. Dave and Jacob agreed it didn't

reflect the times they were living in. Jacob said the zoning did not define what sole or permanent living quarters were. It was left to interpretation, which was where they had problems. The Planning Dept. tried to evenly consider 30 days or more as not a vacation rental. That was consistent with what the Environmental Health Dept. did. Less than 30 days was typically considered not permanent and not sole. That was a department interpretation of the zoning.

Hal asked if there would be information in the minutes from prior meetings this year about the variance that was already granted for that zoning district. Jacob said the minutes were available. They would be discussing those later in this meeting. Hal asked if his request was substantially different than the previously approved one. Dick noticed the house that was granted a variance was built before the area was zoned. Jacob clarified the requested use was very similar in that they wanted to live there part of the time and rent it out part of the time. Dick said he was unable to attend that meeting. He saw the outcome was the variance was granted with certain conditions. Staff recommended denial of this variance. Jacob clarified that they recommended denial for the previous variance too. Dave checked that there was a single lot. Attachment 5 showed 2 lots. Rob explained that two lots were held in common ownership and the deed transferred two lots, and Hal Tiffany purchased one of them. Hal explained that his uncle gave up his equity in the lake property to get clear title to the cabin and the pole barn that were off the lake, so Thomas Tiffany was the owner of that. He might be willing to sell it to Hal. Hal had right of first refusal on that land as well. Hal clarified for Dave that they weren't proposing changes to the structure unless changes were required by Environmental Health or the like. Diana said he was proposing rental of the only single-family residence on that lot. Hal said the lot to the east was owned by Kayle Hobbs, who had two houses above there across the road. He confirmed for Mary that this lot was not built upon except a shed and Kayle had no plans to build on it at this point. Ken Hayes lived on the west side of the house.

Mike J asked about the old Cramer property, which got the variance on Labella Lane. It was an older single-family residence which was currently advertised as a rental for up to 14 people, with a minimum stay of 3 to 6 nights. Back to Dick's point, there was no regulation. Suddenly it went from a single-family residence to a rental. He questioned the age of the septic and so forth for 14 people. It went from a single-family residence to pretty much out of control, with 3 to 6 days [for rental period] and sleeping 14 people. That was the Internet advertisement. This was the crux of their concern.

Diana said at the time that [Environmental Health] looked at the vacation rental and the licensure process, they looked first for a permit of record and then if it was sized according to the number of bedrooms in the structure. They hadn't done an occupancy because it was difficult to police. What they reviewed was what the structure was built for: number of bedrooms and what their septic system [was rated for]. Mike asked if there was control after a variance was passed so it didn't go from single-family to 14 people. Did something slow that down? Wally said that was Dick's point. They could have and should have placed those conditions on that variance, if they did not. It was doable for this Board to put on conditions. One thing that variances got you was some control and regulation.

Diana and Jacob said they didn't put occupancy numbers on things they issued. You couldn't police that. Mary said an owner might rent to a family of 5 but might not get there to see who

showed up. Mike said it also affected the small road. The maintenance was marginal and suddenly you had 14 people coming and going. It was a different wear and tear from a single-family residence, which was where it got out of control. He agreed with Dick's point that there wasn't continuity. Sandy added that Mike plowed most of Labella Ln for free every winter. It raised the ante if that many more people were there. Mary noted [these renters] didn't contribute.

Dick reiterated that he thought they should table this for a period of time until some kind of policy could be determined, rather than doing this piecemeal each time someone came in and wanted to do this. There would be increasingly more [requests]. [Mary] said they needed to contact the landowners. Dave asked about tabling. Jacob said they could do that but there were time limitations. He and Wally thought state law had a limit of 30 or 60 days. Wally added that as long as the applicant agreed, a longer time could be chosen.

Motion made by Dick Goldsmith to ask the applicant if he would agree to 120-day time period to give the Labella Lane neighbors time to notify the entire zoning district about what was going on and to get more neighborhood input as to how they felt about it. He felt that zoning was for the neighbors. Boards or Commissioners could make the final decisions but it was really good to get public input, which was fairly limited at most public meetings. He pointed to Mike, who bought in a single-family neighborhood because that was what he wanted, rather than a rental neighborhood. Gale asked Wally if it was out of line for the Commissioners to mail everyone in the district and request a community meeting. Wally said it was appropriate, and the more public notice you gave, the better. The other thing for the Commissioners to discuss was that if they did a continuance or tabled this, perhaps as a matter of policy, when these came in the future with variances, each district could be given notice to the district's board or to the district to broaden what they did. It put more responsibility on the Planning Office but it got better input and better information out there. Jacob pointed out that would drive up the cost for the applicant and make these unaffordable for people. They had to do [notice] as zoning described. Some might describe certified and some were first class. Either way, it would be a considerable cost to do a blanket notification to the district for each variance.

Gale was concerned about spot zoning. To him, it was fairly clear what the folks in the zoning district wanted. When they granted these variances, it was spot zoning. He would support tabling it and further discussion.

Hal didn't see an advantage for him in extending the time. He wasn't asking for anything different than the one in the minutes that was previously approved except that his use wouldn't be blatant with advertising for 14 people. There was no way his wife wanted that. Dave said [the previous applicant] said the same thing. They promised that it would just be a family and no different than if their family was there, and like a single-family use. Diana said she walked through and licensed that. It didn't take too much to get to 14 people in a 3-bedroom house. Dave commented on 14 adults. Hal thought part of the job of a commissioner was to judge the character of the people who came before them. Apparently that one didn't live up to what they had in mind. He suggested using conditions.

Sandy asked about renting in a zoning district for 30 days. Dave said more than 30 days meant someone was renting the house. When it was weekly or daily, it was more along the lines of a motel. Diana explained that in the State of Montana, the public accommodations licensure is required of facilities that are renting on less than a monthly basis. Hal asked if the County got any of that money. The Dept. of Revenue notified him there would be some lodging tax. Diana confirmed the Dept. of Revenue had the lodging tax. The State of Montana Food and Consumer Safety did the licensing for public accommodations. Lake County was contracted to do those pre-opening inspections, and yearly inspections for hotels and motels. Other inspections were complaint-based.

Motion died for lack of second.

Motion made by Diana Luke to approve the variance request with the conditions as listed in the staff analysis and with the commentary that the Planning Dept. make available the property owner list and the effort to somehow facilitate addressing the zoning and amending it if that's the will of the zoning district.

Hal described parking on the property as being a 2-car garage with 2 parking spaces behind it in response to Dick's question. The other driveway was used for things like putting a jet ski into the water. It wouldn't work for a big boat—it would tear up the lawn. It worked for a light trailer. The only off-site parking was between the garage and the road. He wasn't supplying anything like motorized watercraft to people. If someone wanted to use the driveway that was normally used for egress from the lake, that would give another 6 spots for 4-door sized cars (not trucks). They looked at attachments 3 and 6. Hal said people weren't going to fly in and rent 5 vehicles. There was plenty of parking but he didn't envision a lot of traffic or cars using his property.

Motion died for lack of second.

Motion made by Gale Decker, and seconded by Paula Holle, to deny the variance request as presented. Motion carried, 3 in favor (Gale Decker, Paula Holle, Dick Goldsmith) and two opposed (Diana Luke, Bill Barron). Dave Stipe said there was no tie for him to break so he would not vote.

MINUTES: (11:12 am)

March 20, 2018:

Motion made by Dick Goldsmith, and seconded by Diana Luke, to approve the minutes as presented. Motion carried, all in favor

January 17, 2018:

Motion made by Gale Decker, and seconded by Paula Holle, to approve the minutes as presented. Motion carried, all in favor

OTHER BUSINESS (11:13 am)

Jacob checked if action needed to be taken regarding the board's chair. The board took no action.

Adjournment by acclamation via Dave Stipe, at 11:14 am.